

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

MICHAEL J. SELIGSOHN et al.,

Plaintiffs and Appellants,

v.

PHILIP R. DAY, JR., et al.,

Defendants and Respondents.

A104117

(San Francisco County
Super. Ct. No. CGC-03-416820)

BY THE COURT:

It is ordered that the opinion filed herein on August 10, 2004, be modified as follows:

1. The following sentence is added as a second, separate paragraph to footnote 3 on page 7: “Similarly, our holding regarding the non-applicability of section 3303 to the present factual circumstances makes it unnecessary to discuss a case relied upon by respondents, *Pasadena Police Officers Assn. v. City of Pasadena* (1990) 51 Cal.3d 564; that decision dealt almost entirely with the interpretation and application of section 3303.”

2. Footnote 9 is added after the word “appellants” at the end of the first full paragraph on page 15. That footnote will now read:

“Respondents contend that they are excused from complying with the mandate of section 3305 due to the requirements of both state and federal law restricting the disclosure of a ‘pupil record’ or ‘education records.’ (See the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (a)(4)(A) & (b)(2) and Ed. Code, §§ 49060, 49061, subd. (b).) This argument has no merit for at least two reasons. In the first place,

the complaint against Officer Castillo was made by a faculty member and contained no mention of the names of any students. Although the complaint against Officer Seligsohn did name the student complainant, there is nothing in the Bill of Rights Act, the cited federal statute, or the relevant Education Code provisions that would preclude compliance with section 3305 regarding that complaint. (Cf. *Poway Unified School Dist. v. Superior Court* (1998) 62 Cal.App.4th 1496, 1506-1507.)”

This modification does not effect a change in the judgment.

The petition for rehearing is denied.

Dated: August 31, 2004

Haerle, Acting P.J.